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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
NEW CINGULAR WIRELESS PCS, LLC)	CASE NO. NCW-T-13-01
(AT&T MOBILITY) FOR CONDITIONAL)	
DESIGNATION AS AN ELIGIBLE)	COMMENTS OF THE
TELECOMMUNICATIONS CARRIER IN)	COMMISSION STAFF
IDAHO.)	
_____)	

The Staff of the Idaho Public Utilities Commission, by and through its Attorney of Record, Neil Price, Deputy Attorney General, in response to the Notice of Application and Notice of Modified Procedure, issued on May 9, 2013, Order No. 32806, submits the following comments.

BACKGROUND

On April 24, 2013, New Cingular Wireless PCS, LLC ("AT&T Mobility" or "Company") filed an Application, pursuant to 47 U.S.C. § 214(e)(2), for conditional designation as an eligible telecommunications carrier ("ETC") in certain areas¹ of Idaho outside its existing service areas so that it may participate in the Federal Communications Commission's ("FCC") Mobility Fund Phase I ("MFI") program. AT&T Mobility refers to this Application as its Application for MFI ETC Designation in order to distinguish it from its existing ETC designation.

¹ Exhibit A of AT&T Mobility's Application includes a list of the census blocks/areas in Adams, Idaho, Lemhi and Valley counties.

On April 16, 2008, the FCC approved AT&T Mobility II LLC's acquisition of Edge Wireless.² Edge Wireless was previously designated by the Commission as an ETC in Idaho. *See* Case No. EDG-T-07-01, Order No. 30360. On August 14, 2008, AT&T sent a letter to the Commission explaining the transaction that Edge remained a separate legal entity, although it was now a subsidiary of AT&T and that it wished to retain its designation as an ETC. On December 31, 2010, AT&T consolidated Edge into New Cingular Wireless PCS, LLC, a subsidiary of AT&T Mobility LLC.

The Application

AT&T Mobility, a wholly owned subsidiary of AT&T, is a Delaware limited liability Company with its principal place of business located in Atlanta, Georgia.³ AT&T Mobility states that it is a facilities-based wireless telecommunications carrier providing commercial mobile radio service ("CMRS") that uses its own switching, cell sites, and associated telecommunications facilities in Idaho.⁴

On February 5, 2013, AT&T Inc. and Atlantic Tele-Network ("ATN") filed an application pursuant to sections 214 and 310 of the Communications Act of 1934, as amended to approve the transfer of spectrum licenses, leases, authorizations and other assets used in the operation of ATN's retail wireless businesses in 28 Cellular Marketing Areas in Idaho from ATN's wholly-owned subsidiary, Allied Wireless ("Allied"), to AT&T Mobility, an indirect, wholly-owned subsidiary of AT&T.⁵ Last year, the FCC selected Allied as a winning MFI auction bidder in several census tracts in Idaho. While AT&T Mobility is an existing ETC in Idaho, most of Allied's winning MFI bids in Idaho are for census blocks outside of AT&T Mobility's ETC service area.⁶ The Company states that its designation as a conditional ETC is necessary for AT&T Mobility to participate in the MFI program in Idaho in the event that the FCC approves the transfer of certain licenses and assets from Atlantic Tele-Network, Inc. ("ATN") to AT&T.⁷

² See FCC Public Notice *Wireless Telecommunications Bureau, Assignment of License Authorization Applications, Transfer of Control of License Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Report Action*, Report Number 4002, Report dated April 16, 2008. The closing date of the transaction was April 18, 2008.

³ Id. at 4.

⁴ Id. at 4.

⁵ Id. at 2.

⁶ Id.

⁷ Application at 1-2.

In its Application, AT&T Mobility requests that the Commission grant the ETC designation conditional on: (1) the FCC's approval of the transfer of Allied's licenses and assets to AT&T Mobility; and (2) FCC authorization of MFI support for AT&T Mobility. If the aforementioned FCC approval is not granted then AT&T Mobility asks the Commission to declare its Application null and void.⁸ If the FCC authorizes AT&T Mobility to receive MFI support in some but not all of the areas listed in Exhibit A, *see* footnote 1, the Company asks the Commission to nullify its MFI ETC designation in those areas where AT&T Mobility is not authorized to receive MFI support. AT&T Mobility's existing ETC designation in Idaho (Study Area Code 479006) will not be affected by any such nullification.

Overview of the Mobility Fund, Phase 1

On, November 19, 2011, the FCC released the USF/ICC Transformation Order in which it established the Auction 901.⁹ The FCC set aside \$300 million to be used to increase the availability of current generation mobile broadband and mobile voice across the country.¹⁰ The FCC recognized that the current system¹¹ is not efficient and that universal service funding for mobile networks must be deployed in a more targeted and efficient fashion.

MF1 will award funds to carriers that commit to deploying 3G or better mobile voice and broadband services in census blocks¹² where such services are unavailable. Support will be allocated to maximize the road miles covered by new mobile services without exceeding the budget of \$300 million. Winning bidders will be obligated to choose whether to deploy 3G service within two years or 4G within three years of the award.¹³

Mobility Fund Phase 1 Eligibility Requirements and Certifications¹⁴

1. ETC Designation Certification. To be eligible to participate in MF1, the applicant must be designated as an ETC pursuant to Section 214 of the Communications Act in any

⁸ *Id.*

⁹ *USF/ICC Transformation Order*, released on November 18, 2011 para. 299.

¹⁰ *Id.* para. 295.

¹¹ "Yet despite growth in annual funding [of USF] for competitive ETCs of almost 1000 percent over the past decade—from less than \$17 million in 2001 to roughly \$1.2 billion in 2010—there remain many areas of the country where people live, work, and travel that lack any mobile voice coverage, and still larger geographic areas that lack current generation mobile broadband coverage." *Id.* at para. 295.

¹² The census block is the smallest geographic unit for which the Census Bureau collects and tabulates decennial census data. Some census blocks, particularly in rural areas, may include both served and unserved areas. *USF/ICC Transformation Order*, para. 331.

¹³ *Auction 901 Procedures Public Notice DA12-721*, released on May 8, 2012, para. 2.

¹⁴ *Id.* at 29.

geographic area for which it seeks support, with the exception of Tribally-owned or controlled entities. The entity, and not a subsidiary or parent holding company, must be designated by a State or the FCC as an ETC in that geographic area to be eligible to participate in the auction.¹⁵ ETC status carries with it certain obligations. A party might obtain the required ETC designation but may not be subject to the obligations unless and until it is awarded Mobility Fund support. The FCC will allow a party to participate in the auction if it has an ETC designation conditioned upon the party winning support in the auction.¹⁶

2. Access to Spectrum Description and Certification. Pursuant to the USF/ICC Transformation Order, any applicant for MF1 must have access to the necessary spectrum to fulfill any obligations related to support.¹⁷
3. Financial and Technical Capability Certification. The FCC requires that an applicant certify in the pre-auction short-form application that it is financially and technically capable of providing 3G or better service within the specified timeframe in the geographic areas for which it seeks support.
4. Certification that Applicant Will Not Seek Support for Areas in Which It has Made a Public Commitment to Deploy 3G or Better Service by December 31, 2012. The FCC requires each applicant for MF1 support certify that it will not seek support for any areas in which it has previously made a public commitment to deploy 3G or better wireless service by December 31, 2012.¹⁸

Staff believes AT&T Mobility satisfies or will meet the first three requirements and that the Company will be required to meet the last requirement upon participate in the MF1.

STAFF ANALYSIS

Staff has reviewed AT&T Mobility's Application and has conducted an analysis of the Company's fulfillment of 47 U.S.C. § 214(e), 47 C.F.R. § 54.1003, Order No. 29841 and the MF1 requirements. In addition, Staff has analyzed the public interest benefits of awarding the Company a conditional ETC designation.

¹⁵ *Id.* para. 93.

¹⁶ *Id.* para. 94.

¹⁷ *Id.* para. 96.

¹⁸ *Id.* para. 98.

Public Interest Analysis

Under Section 214 of the Telecommunications Act of 1996, individual State Commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity.¹⁹

MF1 recipients must offer voice service with coverage of at least 75 percent or more of the designated road miles within the area for which support is provided. Additionally, receipt of the Mobility Fund Phase 1 support is conditioned upon the recipient providing service over a network that achieves particular data rates under particular conditions, which the FCC refers to as 3G networks or better.²⁰

AT&T Mobility requests ETC designation outside of its current ETC service area and in unserved areas. As such, the public interest analysis is a simple one. The fact that no other carriers serve these census blocks suggests that it would be in the public interest to grant the required ETC designation to AT&T Mobility and allow it to deploy services to these areas.

Other Public Interest Considerations

When applying the public interest test for an ETC Application, Staff has reviewed other requirements that ETCs must satisfy. These public interest considerations are summarized below:

Company contribution to the Idaho Telephones Service Assistance Program (ITSAP). Staff has verified that the Company is remitting ITSAP fees to the program Administrator.²¹

AT&T Mobility has the ability to remain functional in emergency situations.²² AT&T Mobility “has the ability to remain functional in emergency situations.” The Company states that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to re-route traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.²³ AT&T Mobility asserts that it has monitoring systems in place; a comprehensive emergency response plan; all of its cell sites within its ETC designated area in Idaho have permanent battery back-up power as well as a number of “plug in” portable generators that can be deployed to any switch location; and, a cell site on wheels for emergency or temporary deployment in Idaho.²⁴

¹⁹ 47 U.S.C. § 214(e)(2).

²⁰ *Auction 901 Procedures Public Notice* para. 26.

²¹ 2012 ITSAP Annual Report, *Confidential* Monthly Reports.

²² Application at 13.

²³ *Id.*

²⁴ *Id.* at 10-11.

For the reasons stated above, Staff believes that AT&T Mobility satisfies the public interest analysis.

Other ETC Designation Requirements

Additional requirements for ETC designation, not previously discussed, are detailed in the Appendix 1 of Order No. 29841 and discussed more fully below.

1. Common Carrier Status. AT&T Mobility is a Commercial Mobile Radio Services (CMRS) carrier providing “mobile service” as defined in 47 U.S.C. § 153(27).²⁵
2. Provide the Universal Services. AT&T Mobility offers the federally designated services listed at 47 U.S.C. § 54.10(a).²⁶
3. Advertising. AT&T Mobility will advertise the availability and pricing of its universal service offering.²⁷
4. The Commitment and Ability to Provide Supported Service. AT&T Mobility will use USF support as set forth under the Phase 1 Mobility Fund.²⁸
5. Commitment to Consumer Protection and Service. AT&T Mobility certifies that it will comply with all applicable service quality standards and consumer protection rules including CTIA’s Consumer Code for Wireless Service as it may be amended from time to time.²⁹
6. Description of the Local Usage Plan. AT&T Mobility’s service offering are described in Exhibit B.³⁰
7. Tribal Notification. AT&T Mobility will provide notice to any potentially affected tribal governments or tribal regulatory authorities as well as a copy of the Application.³¹

STAFF RECOMMENDATION

Staff has reviewed AT&T Mobility’s Application seeking conditional ETC designation and believes the Company has the financial, technical, and managerial capabilities to provide 3G or better service. Staff believes the Company is able to fulfill the MF1 obligations should the FCC approve the transfer of assets from Allied to AT&T Mobility.

²⁵ *Id.* at 6-7.

²⁶ *Id.* at 7-8.

²⁷ *Id.* at 8-9.

²⁸ *Id.* at 9.

²⁹ *Id.* at 1.

³⁰ *Id.* Exh. B.

³¹ *Id.* at 12.

Staff believes that AT&T Mobility's request for a conditional ETC designation is in the public interest and recommends Commission approval of the Application.

Respectfully submitted this 30th day of May 2013.



Neil Price
Deputy Attorney General

Technical Staff: Grace Seaman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 30TH DAY OF MAY 2013,
SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN
CASE NO. NCW-T-13-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID,
TO THE FOLLOWING:

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